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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/609,132	06/26/2003	Andrew J. Bocckle	0133.00	6677
21968	7590	09/26/2007		
NEKTAR THERAPEUTICS 201 INDUSTRIAL ROAD SAN CARLOS, CA 94070			EXAMINER HUYNH, LOUIS K	
			ART UNIT	PAPER NUMBER
			3721	
			MAIL DATE	DELIVERY MODE
			09/26/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/609,132

Applicant(s)

BOECKLE ET AL.

Examiner

Louis K. Huynh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3,6-34 and 36-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,6-34 and 36-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 1/30/06.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Acknowledgement*

1. The reply filed on 01/11/2007 in response to the Notice of Non-Compliance Amendment mailed on 04/18/2007 has been received and entered.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3, 6-12, 14, 19-21, 31-34, 36-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Sun'302 et al. (US 5,753,302).

- With respect to claims 1-3, 6 and 7, Sun'302 discloses an acoustic dispenser (1710) including a hopper (1780) adapted to contain pharmaceutical powder, and a vibrating membrane (1760) that vibrates at a selected frequency, preferably at resonant frequency (col. 8, lines 41-54) and disturbs the air within the hopper (1780) to dispense the powder through the outlet of the hopper (FIG. 1).

Regarding the functional language of the supply of powder being spaced from the vibratable member when the vibratable member is not vibrating, the acoustic dispenser of Sun'302 is fully capable of disturbing the air within the hopper (1780) with or without the pharmaceutical powder. Furthermore, the pharmaceutical powder will not be in contact with the vibrating membrane when

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the acoustic dispenser of Sun'302 is not working (the vibrating membrane (1760) is not vibrating) and the pharmaceutical is not present in the hopper (1780).

- With respect to claims 31-34, 36 and 38, Sun'302 teaches a method for filling a chamber including the steps of: providing a pharmaceutical powder in a hopper (1780), disturbing air in the hopper by vibrating a membrane (1760) in contact with the powder to dispense the powder through an outlet of the hopper and into a chamber such as a capsule (col. 15, lines 36-40). Note that prior to providing the pharmaceutical powder into the hopper (1780), the vibrating membrane is not vibrating and the pharmaceutical powder is provided separately and is not in contact with the vibrating membrane (1760); thus the step of providing a separation between the pharmaceutical powder and the vibrating membrane.
- With respect to claims 8 and 37, the membrane (1760) of the acoustic dispenser (1710) of Sun'302 is operated at audible range having known frequency of about 20Hz to about 200kHz, which includes the range of about 10Hz to about 1kHz as claimed.
- With respect to claims 9-11, the membrane (1760) in the acoustic dispenser of Sun'302 is the powder vibrating member that vibrates in contact with the powder, and the membrane vibrates in a direction generally parallel to a longitudinal axis of the speaker (1720).
- With respect to claims 12 and 14, the acoustic dispenser of Sun'302 is adapted to dispense pharmaceutical powder into capsules (col. 15, lines 36-40).

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- With respect to claims 19-21, the hopper (1780) is an enclosure having side walls and a cover, wherein the cover comprise the membrane (1760) (FIG. 1).

4. Claims 1-3, 6, 8, 9, 11-16, 22-24, 28-34, 36, 37, 39 and 40 are rejected under 35

U.S.C. 102(b) as being anticipated by Sun'666 (US 6,168,666).

- With respect to claims 1-3, 6, 8, 22-24, Sun'666 discloses an acoustic dispenser (FIG. 1) including a hopper (BDP) adapted to contain pharmaceutical powder (BEAD), and a vibrating membrane (CONE) spaced from the pharmaceutical powder and is adapted to vibrate at a selected frequency, preferably between 10-400 Hz (col. 15, line 62 – col. 19, line 6) to disturb the air within the hopper (BDP) in order to dispense the powder through the outlet of the hopper (BDP) and into chambers (BCZ).
- With respect to claims 9 and 11, the membrane (1760) in the acoustic dispenser of Sun'302 is the powder vibrating member that vibrates in a direction generally parallel to a longitudinal axis of the speaker (1720).
- With respect to claims 31-34, 36 and 37, Sun'666 discloses a method for filling a chamber including the steps of: providing a pharmaceutical powder (BEAD) in a hopper (BDP), providing a mesh (MESH) that separates the pharmaceutical powder (BEAD) and a vibrating membrane (CONE), disturbing air in the hopper by vibrating a vibrating membrane (CONE), and passing the powder through an outlet of the hopper into a chamber (BCZ); wherein the membrane (CONE) is preferably vibrated at a frequency of about 10-400 Hz to fluidize the powder.

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- With respect to claims 12-16, 28-30 and 40, Sun'666 discloses a powder transport chuck (BTC) that includes chambers (BCZ) for holding substrate such as capsules (col. 10, line 62 – col. 11, line 8), and/or for receiving the powder and transporting the powder to discharge the powder in creating pharmaceutical compositions (col. 1, lines 5-15).
- With respect to claim 39, the chambers to be filled in the method of Sun'666 include capsules which are normally sealed after being filled; hence, the step of sealing the chamber(s).

5. Claims 22 and 25-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Parks et al. (US 5,826,633).

- With respect to claims 22 and 25-30, Parks discloses an apparatus for filling a receptacle (12) including a hopper (18) adapted to contain pharmaceutical powder (28) and having an outlet (46), a vibratable member (34) capable of disturbing air within the hopper (18) by vibrating a screen member (30) in a longitudinal direction of the member (22) (col. 4, lines 34-36) that contact the powder (28), a metering chamber (56) disposed on a transfer wheel (16) that rotates between a receiving position and an ejecting position (FIGS 5-8), and a blister receptacle (12) for receiving the metered powder. Note that the vibratable member (34) is not in contact with the powder (28) (FIG. 4) whether or not the vibratable member (34) is vibrating, and the vibratable member (34) is capable of fluidizing the

powder (28) by transmitting the vibration to the screen member (30) when the vibratable member (34) is vibrating (col. 10, lines 23-43).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 17, 18 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sun'666 in view of Sun'099 et al. (US 5,858,099).

- With respect to claims 17,18 and 41, the acoustic dispenser and method of Sun'666 teaches the chambers (BCZ) in the powder transport chuck (BTC) which meets all of applicant's claimed subject matter but lacks the specific teaching of the chamber(s) being in a rotating member and the step of rotating the chamber(s) from a powder receiving position to a powder ejecting position. However, Sun'099 discloses an acoustic dispenser and a method of filling chamber that utilize a rotatable powder transport chuck which receives powder from the acoustic dispenser in a receiving position, rotates to an ejecting position to deposit the powder into edible powder receptacles (FIG. 15). Therefore; it would have been obvious to a skilled person in the art, at the time of the invention, to have provided the acoustic dispenser of Sun'666 with a rotatable powder transport chuck, as taught by Sun'099, for transporting the pharmaceutical powder from the

acoustic dispenser to an ejecting position in order to discharge the powder into edible receptacles.

***Response to Arguments***

8. Applicant's arguments with respect to claims 1, 22 and 31 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

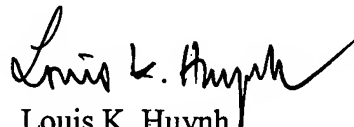
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Louis K. Huynh whose telephone number is 571-272-4462. The examiner can normally be reached on M-F from 8:00AM to 3:00PM.



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11. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Louis K. Huynh  
Primary Examiner  
Art Unit 3721

September 20, 2007